

## REMARKS

The Examiner rejected claims 15-20 under 35 U.S.C. § 112, first paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. The Examiner rejected claims 1-4, 6, 7, 10-15 and 18-19 under 35 U.S.C. § 103(a) as being unpatentable over Kitterman, et al. (U.S. Patent No. 5,628,142). The Examiner rejected claims 5, 16 and 20 under 35 U.S.C. § 103(a) as being unpatentable over Kitterman in view of Petry (U.S. Patent No. 2,286,568). The Examiner rejected claims 8-9 and 17 under 35 U.S.C. § 103(a) as being unpatentable over Kitterman in view of Cook, et al. (U.S. Patent No. 5,713,153). In response, the Applicant has amended the claims and has set forth arguments supporting the patentability of the claims over the cited prior art. The Applicant believes the amendments made in response to the Examiner's rejections have placed the application in position for allowance.

## Amendments to the Claims

15 To clarify the scope of the present invention and to more clearly distinguish the present  
16 invention from the cited prior art, Applicant is amending the claims as set forth below:

17 a) claim 1 - Amending this claim to clarify that the vertical support member is configured to  
18 be supported generally vertically above a support surface, that the insect attracting light is mounted  
19 substantially adjacent to the vertical support member, that the panel member is rigid or semi-rigid and  
20 that the insect immobilizing element is mounted in a generally vertical upright position substantially  
21 adjacent to the insect attracting light and/or the vertical support member. This amendment is  
22 supported by the specification, including Figures 1 and 2.

b) claim 2 - Amending this claim to delete the first end limitation.

24 c) claim 3 - Amending this claim to delete the means language and add the limitation that the  
25 apparatus includes a ground support member to cooperatively engage the lower pole section.

1           d) claim 4 - Amending this claim to delete the reference to the means language deleted from  
2 claim 1.

3           e) claim 6 - Amending this claim to delete the reference to the means language deleted from  
4 claim 1.

5           f) claim 7 - Amending this claim to delete the light bulb limitation and add the limitation that  
6 the insect immobilizing element has a frame substantially bounding the panel member.

7           g) claim 8 - Adding the limitation, previously in claim 9, that the openings are sized and  
8 configured to allow small flying insects (i.e., the not-of-interest insects mentioned in the disclosure) to  
9 pass through the openings without contacting the adhesive surface(s).

10          h) claim 9 - Deleting the opening size limitation (now incorporated into claim 8) and replacing  
11 it with the limitation that the apparatus has a photosensitive element configured to control the insect  
12 attracting light. This limitation is supported by the detailed description and shown in Figures 1 and 2.

13          i) claim 12 - Deleting the battery limitation (now incorporated into claim amended claim 14)  
14 and replacing it with the limitation that the immobilizing element is generally parallel to the vertical  
15 support member, as shown in Figures 1 and 2.

16          j) claim 13 - Deleting the recharging limitation (now incorporated into claim amended claim  
17 14) and replacing it with the limitation that the immobilizing element is configured to allow light from  
18 the insect attracting light to pass through. This limitation is discussed in the detailed description at  
19 page 19, lines 4 through 8.

20          k) claim 14 - Amending this claim to include the battery and recharging limitations of original  
21 claims 12 and 13.

22          l) claim 15 - Amending this claim to delete the tubular first end limitation and to clarify that  
23 the insect attracting light is mounted substantially adjacent to the vertical support member, that the  
24 insect attracting light has at least one source of light, that the panel member is rigid or semi-rigid and  
25 that the insect immobilizing element is mounted in a generally vertical upright position substantially

1 adjacent to the insect attracting light and/or the vertical support member. This amendment is  
2 supported by the specification, including Figures 1 and 2.

3 m) claim 17 - Amending this claim to add the limitation that the openings are sized and  
4 configured to allow small flying insects (i.e., the not-of-interest insects mentioned in the disclosure) to  
5 pass through the openings without contacting the adhesive surface(s). This limitation was previously  
6 the subject of original claim 9 and is supported by the specification.

7 n) claim 18 - Amending this claim to incorporate the solar panel and recharge limitations that  
8 are also the subject of amended claim 14. This amendment is supported by the specification.

9 o) claim 19 - Amending this claim to delete the recharging limitation, which is now  
10 incorporated into claim 18, and replacing it with the limitation that the immobilizing element is  
11 configured to allow light from the insect attracting light to pass through. This limitation is discussed  
12 in the detailed description at page 19, lines 4 through 8.

13 p) claim 20 - Amending this claim to delete the tubular first end limitation and to clarify that  
14 the insect attracting light is mounted substantially adjacent to the vertical support member, that the  
15 insect attracting light has at least one source of light, that the insect immobilizing element is mounted  
16 in a generally vertical upright position substantially adjacent to the insect attracting light and/or the  
17 vertical support member and that the openings in the mesh are sized and configured to allow small  
18 flying insects (i.e., the not-of-interest insects mentioned in the disclosure) to pass through the  
19 openings without contacting the adhesive surface(s). This amendment is supported by the  
20 specification, including Figures 1 and 2.

21

22 Rejection under 35 U.S.C. § 112, second paragraph (Indefiniteness)

23 The Examiner rejected claims 15 and 20 under 35 U.S.C. § 112, second paragraph, as  
24 being indefinite for failing to particularly point out and distinctly claim the subject matter which  
25 applicant regards as his invention. Although the Applicant agrees with the Examiner, the

26

27 RESPONSE/AMENDMENT

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1 amendments made to these claims, namely the deletion of the “said first end of said vertical support  
2 member tubular” language, appears to obviate the Examiner’s rejection under 35 U.S.C. § 112.

3

4 Rejection under 35 U.S.C. § 103(a)

5 With regard to the obviousness rejections for all of the claims, which are based on  
6 Kitterman and combinations of Kitterman with Petry or Cook, Section 103(a) only denies patentability  
7 to those inventions whose “subject matter as a whole would have been obvious at the time the  
8 invention was made to a person having ordinary skill in the art to which said subject matter pertains.”  
9 (35 U.S.C. § 103.) As stated by the court in In re Geiger, 2 USPQ2d 1276 (CAFC 1987),  
10 “[o]bviousness cannot be established by combining the teachings of the prior art to produce the  
11 claimed invention, absent some teaching, suggestion or incentive supporting the combination.” (In re  
12 Geiger, 2 USPQ2d at 1278.) The motivation or suggestion to combine references must exist,  
13 otherwise the determination of obviousness involves nothing more “than indiscriminately combining  
14 prior art.” (Micro Chemical Inc. v. Great Plains Chemical Co., 41 USPQ2d 1238, 1244 (CAFC  
15 1997).) In In re Fritch, 23 USPQ2d 1780 (CAFC 1992), the Federal Circuit stated the following:

16 In proceedings before the Patent and Trademark Office, the Examiner bears the burden of  
17 establishing a *prima facie* case of obviousness based upon the prior art. The Examiner can  
18 satisfy this burden only by showing some objective teaching in the prior art or that knowledge  
generally available to one of ordinary skill in the art would lead that individual to combine the  
relevant teachings of the references.

19 Obviousness cannot be established by combining the teachings of the prior art to produce the  
20 claimed invention, absent some teaching or suggestion supporting the combination. Under  
21 section 103, teachings of references can be combined *only* if there is some suggestion or  
incentive to do so. Although couched in terms of combining teachings found in the prior art,  
the same inquiry must be carried out in the context of a purported obvious “modification” of  
the prior art. The mere fact that the prior art may be modified in the manner suggested by the  
Examiner does not make the modification obvious unless the prior art suggested the  
desirability of the modification.

22 Here, the Examiner relied upon hindsight to arrive at the determination of obviousness. It is  
impermissible to use the claimed invention as an instruction manual or “template” to piece  
together the teachings of the prior art so that the claimed invention is rendered obvious. This  
court has previously stated that one cannot use hindsight reconstruction to pick and choose  
among isolated disclosures in the prior art to deprecate the claimed invention. (In re Fritch,  
23 USPQ2d at 1783-84 (internal quotes and citations removed).)

1                   Respectfully, nothing suggests combining the teachings of Kitterman with Petry and/or  
2 Cook or with knowledge commonly known in the art, in any combination suggested by the Examiner,  
3 to arrive at Applicant's invention. Nothing in either the these references, or any knowledge generally  
4 available to one of ordinary skill in the art, compels, teaches, suggests or even offers any incentive  
5 such that an individual wanting to have an apparatus for trapping flying insects such as Applicant's  
6 invention would combine the teachings from Petry or Cook with Kitterman, as suggested by the  
7 Examiner. (See In re Fritch, 23 USPQ2d at 1783; In re Geiger, 2 USPQ2d at 1278.) The claims, as  
8 presently amended, believed to be non-obvious in light of the subject prior art.

9                   Kitterman discloses an apparatus that has an elongated, flexible strip that is provided on  
10 a roll that is unwound over a frame between rollers. The elongated strip is provided with a sticky  
11 substance to stick the insects. A light mechanism, having a battery and recharge mechanism, is  
12 mounted at one end of the frame somewhat above the elongated strip. The frame is mounted on top  
13 of a post that, like Applicant's invention, can be attached to a base or inserted into the ground to  
14 support the apparatus above the ground. The elongated strip is tubular and unwound from the supply  
15 roll over an expander or sleeve to support the generally tubular-shaped insect trapping area.

16                  The Examiner takes the position that the tubular member of Kitterman could be  
17 considered a curved panel and that it would be obvious to substitute to employ a panel since to do so  
18 would be merely replacing one equivalent member for another and the function is the same.  
19 Applicant respectfully disagrees with this analysis. Kitterman does not disclose the desirability of  
20 configuring the insect trapping area as a panel, as shown and described by the Applicant. Nothing in  
21 the prior art compels, teaches, suggests or even offers any incentive to configure the elongated,  
22 tubular strip of Kitterman into a rigid or semi-rigid panel, as that term is more commonly understood.  
23 There is no indication that a person wanting to solve the problem solved by Applicant's invention  
24 would look to Kitterman and decide to replace a rollable, elongated tubular strip with a generally flat  
25 panel member. Only by impermissibly applying hindsight would a determination of obviousness be  
26 made on the basis of Kitterman alone to replace the strip configuration with a panel. (See In re Fritch,

1 23 USPQ2d at 1784.) This is particularly true as the claims are amended to herein to clarify that the  
2 insect immobilizing element (or insect trapping component) is mounted on the vertical support  
3 member in a generally vertical upright position. Kitterman shows the trapping component being  
4 substantially horizontal. This position presents a significant problem when used in agricultural fields  
5 or other areas subject to dust and other air-borne particles, namely that the horizontal displacement is  
6 very likely to get substantially more of these particles on the sticky surface than a panel that is  
7 vertically displaced (i.e., Applicant's). The dust or other particles will settle on the horizontal  
8 trapping component and reduce the amount of area available for insects. The vertical placement of  
9 Applicant's invention solves this problem.

10 The above amendments also clarify that the insect attracting light is mounted  
11 substantially adjacent to the vertical support member (or pole), that the panel is generally rigid or  
12 semi-rigid (as opposed to flexible so that it can be put into the tubular shape of Kitterman) and that  
13 the insect immobilizing element is positioned substantially adjacent to the light and/or the vertical  
14 support member (as shown in FIGS. 1 and 2 of Applicant's disclosure). The rigid or semi-rigid panel  
15 will function better in the wind, particularly when placed in a vertical position, than the flexible  
16 material disclosed in Kitterman. With the light and panel mounted together on the vertical support  
17 member insects are much more likely to be attracted to the panel than with the light mounted above  
18 and to one side of the insect attracting area as in Kitterman. As stated above, nothing in Kitterman  
19 suggests, compels or offers any incentive to provide these features. As such, Applicant's claims 1, 15  
20 and 20 are not obvious in light of Kitterman.

21 With regard to amended claim 7, Kitterman does not disclose a frame substantially  
22 bounding the insect trapping area. With regard to amended claims 12 and 13, Kitterman does not  
23 disclose the trapping area being substantially parallel to the vertical post or the trapping area being  
24 configured such that light is able to pass through it (i.e., being translucent). The ability for light to  
25 pass through the trapping area is only a benefit in the adjacent configuration of Applicant's invention,  
26 as opposed to the configuration of Kitterman.

With regard to the combination of Kitterman and Petry, Applicant believes the discussion above is applicable to the rejection of claims 5, 16 and 20 and that Applicant's claims, as amended above, are not obvious in light of these two references.

With regard to claims 8-9 and 17, the Examiner rejected these claims based on the combination of Kitterman and Cook. The Examiner takes the position that although Kitterman does not show the panel member as a mesh screen, it would have been obvious to provide Kitterman with a panel member comprising a mesh screen as taught by Cook. Applicant respectfully disagrees with this conclusion. Nothing in either Kitterman or Cook compels, teaches, suggests or even offers any incentive to configure the elongated, tubular strip of Kitterman with a mesh screen from Cook. In fact, it does not appear that configuring Kitterman with the mesh openings of Cook would either work or be of any benefit to Kitterman. If the tubular strip of Kitterman was provided with openings then there would be an interior portion where insects could presumably fly into for some unknown purpose and not of real benefit to trapping insects. Coating the interior of the tubular strip with an adhesive would make it very difficult if not impossible to unwind the strip from the roll. In addition, there would be no reason to use the openings described in Cook for the purposes described therein (i.e., to better waft the insect attracting odors) in the apparatus of Kitterman. Likewise, the purpose of the openings in Cook is significantly different than the openings in Applicant's invention. At Column 12, lines 54-64, Cook describes the use of the openings to facilitate the passage or circulation of air to better distribute the odors and attract insects to the adhesive panels. As set forth in Applicant's disclosure (see page 6, lines 5-16 and page 18, lines 2-16), the purpose of the openings in the panel member of Applicant's apparatus is to allow very small insects, such as gnats and the like, to pass through the panel without clogging or covering the panel with such small insects. In this manner, the apparatus is more useful for catching and counting the insects that are of interest for purposes of treating the fields to get rid of the insects of interest. As such, the subject claims of Applicant's invention would not be obvious in light of Kitterman and Cook.

1           In light of the above amendments and arguments, Applicant respectfully requests the  
2 Examiner to reconsider and withdraw the rejections of the claims set forth in the subject patent  
3 application.

4           Applicant's original application included fees for three independent claims and a total  
5 of twenty claims. No claims are being added and none are being deleted, therefore, after this  
6 amendment a total of twenty claims, including three independent claims, are pending in this  
7 application. No additional fees for claims are believed due.

8           In view of the foregoing, it is submitted that this application is in condition for  
9 allowance. Reconsideration of the rejections in light of this Amendment is requested. Applicant  
10 believes that the amended claims are in condition for allowance. Allowance of claims 1-20 is  
11 respectfully solicited.

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